

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

|   |   |                                     |
|---|---|-------------------------------------|
| <b>NATIONAL UNION FIRE<br/>INSURANCE COMPANY OF<br/>PITTSBURGH, P.A.,</b>         | § |                                     |
| Plaintiff   | § |                                     |
| v.  | § | <b>CIVIL ACTION NO. 4:15-cv-586</b> |
|   | § |                                     |
| <b>WAUSAU UNDERWRITERS<br/>INSURANCE CO., AND LIBERTY<br/>MUTUAL GROUP, INC.,</b> | § |                                     |
| Defendants  | § |                                     |

**NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. §§ 1332 and 1441(b) (DIVERSITY)**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants Wausau Underwriters Insurance Company and Liberty Mutual Group Inc. (collectively, “Wausau”)<sup>1</sup> hereby petition this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 for removal, on the basis of diversity jurisdiction, to the United States District Court for the Northern District of Texas, Fort Worth Division, of the action styled *National Union Fire Insurance Company of Pittsburgh, P.A. v. Wausau Underwriters Insurance Co and Liberty Mutual Group, Inc.*; Cause No. 141-279513-15, currently pending in the 141<sup>st</sup> Judicial District Court of Tarrant County, Texas (the “State Court Case”), and in support thereof would respectfully show this Court as follows:

**I.  
FACTS**

1. Plaintiff National Union and Defendant Wausau are the excess and primary commercial liability insurance carriers, respectively, for named insured Wasco Products, Inc.

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<sup>1</sup> Wausau Underwriters is a member of the Liberty Mutual Group and is the entity that issued the insurance policy in dispute. Wausau Underwriters and Liberty Mutual Group will be referred to individually when necessary.

Wasco Products was sued in a case styled: *Landers v. Wasco Products, Inc., et al.*; Cause No. 48-257207-1, in the 48<sup>th</sup> Judicial District Court of Tarrant County, Texas (“Underlying Lawsuit”). The jury returned a verdict in the Underlying Lawsuit, finding Wasco Products forty-five percent (45%) responsible on a damages award of \$33,839,900.00.<sup>2</sup> Plaintiff National Union filed suit in the State Court Case on June 30, 2015, seeking a declaration that Wausau is liable for any judgment in excess of Wausau’s policy limits of \$1,000,000 per occurrence because Wausau failed to settled the Underlying Lawsuit when it had the opportunity to do so. National Union’s policy limits are \$10,000,000. National Union asserts that it is entitled to this declaration under a theory of equitable subrogation. Wausau denies National Union’s allegations and claims for relief.

2. Defendants Wausau Underwriters and Liberty Mutual Group were both served with National Union’s Petition and citation on July 6, 2015. Both Defendants filed their Original Answers on July 24, 2015. A true and correct copy of all pleadings, process, orders, and correspondence served in this action is attached hereto as Exhibit “A” and incorporated herein by reference.

3. Plaintiff seeks to “hold[] Wausau and Liberty Mutual responsible for all funds paid in excess of the Primary Policy’s limits.” Petition ¶ 5.9. In an action for declaratory relief, the amount in controversy is “the value of the right to be protected or the extent of the injury to be prevented.” *Hartford Ins. Grp. v. Lou-Con Inc.*, 293 F.3d 908, 910 (5th Cir. 2002) (internal citation omitted). Based on the jury findings in the Underlying Lawsuit, National Union seeks protection of its \$10,000,000 policy limits.

4. Complete diversity exists between the Plaintiff and Defendants now as well as on

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<sup>2</sup> The trial court has not rendered judgment yet in the Underlying Lawsuit.

the date of filing of the State Court Case. Plaintiff is a citizen and resident of the State of Pennsylvania with its principal place of business in New York, New York. Petition ¶ 2.1. Defendant Wausau Underwriters is an insurance company incorporated in Wisconsin with its principal place of business in Massachusetts. Defendant Liberty Mutual Group is a citizen of Massachusetts with its principal place of business in Massachusetts.

5. Plaintiff has not made a jury demand in the State Court Case.

6. This action is a civil action which may be removed to this Court by Defendants pursuant to the provisions of 28 U.S.C. §§ 1441(a) and 1332(a) in that it is between citizens of different states; it is a civil action wherein the matter in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs; and no Defendant is a citizen of the State of Texas.

**II.**  
**PROCEDURAL REQUIREMENTS**

7. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice will be given to all adverse parties promptly after the filing of this Notice.

8. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice will be filed with the clerk of the 141<sup>st</sup> Judicial District Court of Tarrant County, Texas, promptly after the filing of this Notice.

9. Attached hereto and incorporated herein, are the following items:

Exhibit A: A true and correct copy of all pleadings, process, and orders served in this action.

Exhibit B: State Court Case docket sheet.

Exhibit C: List of all counsel of record.

Exhibit D: Index of all documents filed with the Court.

WHEREFORE, PREMISES CONSIDERED, Defendants Wausau Underwriters Insurance Company and Liberty Mutual Insurance Group Inc. request that this action be removed from the 141<sup>st</sup> Judicial District Court of Tarrant County, Texas, to the United States District Court for the Northern District of Texas, Fort Worth Division, and that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

**HANNA & PLAUT, L.L.P.**  
211 East Seventh Street, Suite 600  
Austin, Texas 78701  
Telephone: (512) 472-7700  
Facsimile: (512) 472-0205

By: /s/ Catherine L. Hanna  
Catherine L. Hanna  
State Bar No. 08918280  
Email: channa@hannaplaut.com  
Eric S. Peabody  
State Bar No. 00789539  
Email: epeabody@hannaplaut.com

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that on August 5, 2015, a true and correct copy of this document was filed via the Court's ECF system pursuant to LR5.1. The notice of electronic filing generated by the ECT system constitutes service of the document on counsel who are registered users of the system. Any other counsel of record will be served pursuant to FRCP 5(b) on this same date.

**Via Facsimile (713) 658-8253**

Chester J. Makowski  
C. Scott Kinzel  
Plavnický Kinzel Makowski LLP  
5300 Memorial Drive, Suite 675  
Houston, Texas 77007  
*Attorneys for Plaintiff*

/s/ Catherine L. Hanna

Catherine L. Hanna

# **EXHIBIT “A”**

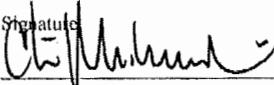
**CIVIL CASE INFORMATION SHEET**  
141-279513-15

CAUSE NUMBER (FOR CLERK USE ONLY): \_\_\_\_\_ COURT (FOR CLERK USE ONLY): \_\_\_\_\_

STYLED National Union Fire Insurance Company of Pittsburgh, PA vs. Wausau Underwriters Insurance Co. and Liberty Mutual Group, Inc.

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

|   |                                     |   |  |
|---|-------------------------------------|---|--|
| <b>1. Contact information for person completing case information sheet:</b>                         |                                     | <b>Names of parties in case:</b>                                    | <b>Person or entity completing sheet is:</b>   |
| Name:<br><br>Chester J. Makowski  | Email:<br><br>makowski@pkmtexas.com | Plaintiff(s)/Petitioner(s):<br><br>National Union Fire Insurance    | <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner<br><input type="checkbox"/> Pro Se Plaintiff/Petitioner<br><input type="checkbox"/> Title IV-D Agency<br><input type="checkbox"/> Other: _____ |
| Address:<br><br>5300 Memorial Drive, #675   | Telephone:<br><br>713-658-1111      | Company of Pittsburgh, PA   | Additional Parties in Child Support Case:  |
| City/State/Zip:<br><br>Houston, Texas 77007   | Fax:<br><br>713-658-8253            | Defendant(s)/Respondent(s):<br><br>Wausau Underwriters Insurance Co | Custodial Parent: _____  |
| Signature:<br><br> | State Bar No:<br><br>12852950       | Liberty Mutual Group, Inc.<br><br>_____                             | Non-Custodial Parent: _____  |
| [Attach additional page as necessary to list all parties]   |                                     |   |  |

**2. Indicate case type, or identify the most important issue in the case (select only 1):**

| <b>Civil</b>   |   |  | <b>Family Law</b>   |   |
|--|---|--|---|---|
| <b>Contract</b><br><br><input type="checkbox"/> Debt/Contract<br><input type="checkbox"/> Consumer/DTPA<br><input type="checkbox"/> Debt/Contract<br><input type="checkbox"/> Fraud/Misrepresentation<br><input type="checkbox"/> Other Debt/Contract:<br><br><input type="checkbox"/> Foreclosure<br><input type="checkbox"/> Home Equity—Expedited<br><input type="checkbox"/> Other Foreclosure<br><br><input type="checkbox"/> Franchise<br><input checked="" type="checkbox"/> Insurance<br><input type="checkbox"/> Landlord/Tenant<br><input type="checkbox"/> Non-Competition<br><input type="checkbox"/> Partnership<br><input type="checkbox"/> Other Contract:<br><br>_____ | <b>Injury or Damage</b><br><br><input type="checkbox"/> Assault/Battery<br><input type="checkbox"/> Construction<br><input type="checkbox"/> Defamation<br><br><input type="checkbox"/> Malpractice<br><input type="checkbox"/> Accounting<br><input type="checkbox"/> Legal<br><input type="checkbox"/> Medical<br><input type="checkbox"/> Other Professional Liability:<br><br><input type="checkbox"/> Motor Vehicle Accident<br><input type="checkbox"/> Premises<br><br><input type="checkbox"/> Product Liability<br><input type="checkbox"/> Asbestos/Silica<br><input type="checkbox"/> Other Product Liability List Product:<br><br><input type="checkbox"/> Other Injury or Damage:<br><br>_____ | <b>Real Property</b><br><br><input type="checkbox"/> Eminent Domain/<br>Condemnation<br><input type="checkbox"/> Partition<br><input type="checkbox"/> Quiet Title<br><input type="checkbox"/> Trespass to Try Title<br><input type="checkbox"/> Other Property:<br><br>_____  | <b>Marriage Relationship</b><br><br><input type="checkbox"/> Annulment<br><input type="checkbox"/> Declare Marriage Void<br><br><input type="checkbox"/> Divorce<br><input type="checkbox"/> With Children<br><input type="checkbox"/> No Children<br><br>_____   | <b>Post-Judgment Actions (non-Title IV-D)</b><br><br><input type="checkbox"/> Enforcement<br><input type="checkbox"/> Modification—Custody<br><input type="checkbox"/> Modification—Other<br><br><input type="checkbox"/> Title IV-D<br><br><input type="checkbox"/> Enforcement/Modification<br><input type="checkbox"/> Paternity<br><input type="checkbox"/> Reciprocal UIFSA<br><input type="checkbox"/> Support Order<br><br>_____   |
| <b>Employment</b><br><br><input type="checkbox"/> Discrimination<br><input type="checkbox"/> Retaliation<br><input type="checkbox"/> Termination<br><input type="checkbox"/> Workers' Compensation<br><input type="checkbox"/> Other Employment:<br><br>_____  | <b>Other Civil</b><br><br><input type="checkbox"/> Administrative Appeal<br><input type="checkbox"/> Antitrust/Unfair Competition<br><input type="checkbox"/> Code Violations<br><input type="checkbox"/> Foreign Judgment<br><input type="checkbox"/> Intellectual Property<br><br>_____   | <b>Related to Criminal Matters</b><br><br><input type="checkbox"/> Expunction<br><input type="checkbox"/> Judgment Nisi<br><input type="checkbox"/> Non-Disclosure<br><input type="checkbox"/> Seizure/Forfeiture<br><input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment<br><input type="checkbox"/> Other:<br><br>_____ | <b>Other Family Law</b><br><br><input type="checkbox"/> Enforce Foreign Judgment<br><input type="checkbox"/> Habeas Corpus<br><input type="checkbox"/> Name Change<br><input type="checkbox"/> Protective Order<br><input type="checkbox"/> Removal of Disabilities of Minority<br><input type="checkbox"/> Other:<br><br>_____ | <b>Parent-Child Relationship</b><br><br><input type="checkbox"/> Adoption/Adoption with Termination<br><input type="checkbox"/> Child Protection<br><input type="checkbox"/> Child Support<br><input type="checkbox"/> Custody or Visitation<br><input type="checkbox"/> Gestational Parenting<br><input type="checkbox"/> Grandparent Access<br><input type="checkbox"/> Parentage/Paternity<br><input type="checkbox"/> Termination of Parental Rights<br><input type="checkbox"/> Other Parent-Child:<br><br>_____ |
| <b>Tax</b><br><br><input type="checkbox"/> Tax Appraisal<br><input type="checkbox"/> Tax Delinquency<br><input type="checkbox"/> Other Tax<br><br>_____  | <b>Probate &amp; Mental Health</b><br><br><input type="checkbox"/> Probate/Wills/Intestate Administration<br><input type="checkbox"/> Dependent Administration<br><input type="checkbox"/> Independent Administration<br><input type="checkbox"/> Other Estate Proceedings<br><br>_____   | <input type="checkbox"/> Lawyer Discipline<br><input type="checkbox"/> Perpetuate Testimony<br><input type="checkbox"/> Securities/Stock<br><input type="checkbox"/> Tortious Interference<br><input type="checkbox"/> Other:<br><br>_____   | <input type="checkbox"/> Guardianship—Adult<br><input type="checkbox"/> Guardianship—Minor<br><input type="checkbox"/> Mental Health<br><input type="checkbox"/> Other:<br><br>_____  |   |

**3. Indicate procedure or remedy, if applicable (may select more than 1):**

|   |   |  |
|---|---|--|
| <input type="checkbox"/> Appeal from Municipal or Justice Court<br><input type="checkbox"/> Arbitration-related<br><input type="checkbox"/> Attachment<br><input type="checkbox"/> Bill of Review<br><input type="checkbox"/> Certiorari<br><input type="checkbox"/> Class Action<br><br>_____  | <input checked="" type="checkbox"/> Declaratory Judgment<br><input type="checkbox"/> Garnishment<br><input type="checkbox"/> Interpleader<br><input type="checkbox"/> License<br><input type="checkbox"/> Mandamus<br><input type="checkbox"/> Post-judgment<br><br>_____ | <input type="checkbox"/> Prejudgment Remedy<br><input type="checkbox"/> Protective Order<br><input type="checkbox"/> Receiver<br><input type="checkbox"/> Sequestration<br><input type="checkbox"/> Temporary Restraining Order/Injunction<br><input type="checkbox"/> Turnover<br><br>_____ |
| <b>4. Indicate damages sought (do not select if it is a family law case):</b>   |   |  |
| <input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees<br><input type="checkbox"/> Less than \$100,000 and non-monetary relief<br><input type="checkbox"/> Over \$100,000 but not more than \$200,000<br><input type="checkbox"/> Over \$200,000 but not more than \$1,000,000<br><input checked="" type="checkbox"/> Over \$1,000,000 |   |  |

141-279513-15

**CAUSE NO.:** \_\_\_\_\_

FILED  
TARRANT COUNTY  
6/30/2015 1:32:37 PM  
THOMAS A. WILDER  
DISTRICT CLERK

NATIONAL UNION FIRE  
INSURANCE COMPANY OF  
PITTSBURGH, PA., § IN THE DISTRICT COURT OF  
§  
§ Plaintiff §  
§  
§  
§  
vs. §  
§  
§  
§  
§  
§  
WAUSAU UNDERWRITERS § TARRANT COUNTY, TEXAS  
INSURANCE CO. AND §  
LIBERTY MUTUAL GROUP, INC., §  
§  
§  
§  
§  
§ Defendants §  
§  
§ JUDICIAL DISTRICT

**ORIGINAL PETITION FOR DECLARATORY JUDGMENT**

TO THE JUDGE OF THIS COURT:

The Plaintiff, National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union"), files this original complaint for declaratory relief pursuant to the Texas Declaratory Judgment Act, and all other applicable law, and in support thereof, would respectfully show as follows:

## I. DISCOVERY

**1.1** National Union requests that discovery be conducted under Level 3 of Rule 190.3 of the Texas Rules of Civil Procedure.

## **II. PARTIES**

**2.1** The Plaintiff, National Union, is an insurance company incorporated in the State of Pennsylvania, with its principal place of business at 175 Water Street, 18th Floor, New York, New York 10038. National Union is an insurer authorized to do business in the State of Texas

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under Texas Department of Insurance Company No. 59500, and National Association of Insurance Commissioners No. 19445.

**2.2** The Defendant, Wausau Underwriters Insurance Company, a member of the Liberty Mutual Group of Companies (“Wausau”), is an insurance company incorporated in the State of Missouri with its principal place of business at 175 Berkeley Street, Boston, Massachusetts 02116-5066, Texas Department of Insurance Company No. 93527, and National Association of Insurance Commissioners No. 26042, and authorized to engage in the business of insurance in Texas.

**2.3** The Defendant, Liberty Mutual Group, Inc. (“Liberty Mutual”) is an insurance company incorporated in the State of Massachusetts with its principal place of business at 175 Berkeley Street, Boston, Massachusetts 02116-5066.

### **III. SERVICE**

**3.1** According to the Texas Department of Insurance, Wausau may be served with process as follows:

Corporation Service Company  
211 East 7th Street, Suite 620  
Austin, Texas 78701 -3218

**3.2** Liberty Mutual may be served with process as follows:

Corporation Service Company  
211 East 7th Street, Suite 620  
Austin, Texas 78701 -3218

### **IV. JURISDICTION AND VENUE**

**4.1** This Court has personal and subject matter jurisdiction as the Defendants do business in Tarrant County, and the underlying lawsuit which is the subject of this action is pending in Tarrant County, and the matter in controversy exceeds, exclusive of interest and

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costs, the jurisdictional limits of this Court. This action also is brought pursuant to the Texas Declaratory Judgment Act, Chapter 37 of the Texas Civil Practice and Remedies Code.

**4.2** Venue of this action in this Court is proper because the Defendants have done business in this District and are subject to personal jurisdiction in this District.

#### **V. FACTUAL BACKGROUND AND LEGAL POSITION**

**5.1** Wasco Products, Inc. (“Wasco”) was sued by Steven Landers in the 48th Judicial District Court of Tarrant County, Texas under Cause No. 48-257207-1, and styled *Landers v. Wasco Products, Inc., et al.* (“the Underlying Lawsuit”).

**5.2** Wausau issued a primary commercial general liability policy listing Wasco Products, Inc. as the named insured under Policy No. YVJ-Z91-531699-030, with coverage commencing on 1 July 2010, and ending on 1 July 2011, providing a general aggregate limit of \$2,000,000 with \$2,000,000 aggregate for products/completed operations and \$1,000,000 in coverage per occurrence (“the Primary Policy”).

**5.3** National Union issued an excess commercial liability policy to Wasco Products, Inc. under Policy No. 010173035 commencing on 1 July 2010, and ending on 1 July 2011, providing \$10,000,000 in coverage in excess of the Wausau policy’s primary aggregate limits of \$2,000,000 coverage for products/completed operations and \$1,000,000 in coverage per occurrence.

**5.4** Tony Dante, Senior Technical Claim Specialist at Liberty Mutual Group, Inc. at its Lawrenceville, Georgia office, was handling the claim for Wausau.

**5.5** National Union repeatedly requested that Wausau and Liberty Mutual settle the Lawsuit within its primary limits; however, Wausau and Liberty Mutual have failed to do so. In

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fact, by a letter dated 17 March 2015, National Union noted that there was a mediator's proposal to settle the case for \$375,000 which was rejected by Wausau and Liberty Mutual.

**5.6** Thereafter, the Underlying Lawsuit was tried to a jury which rendered a verdict in the amount of \$33,839,900, wherein Wasco was found to be 45% responsible.

**5.7** After the verdict, National Union sent a letter dated 3 May 2015 to the Defendants once again requesting that they settle the Underlying Lawsuit within the primary limits. National Union issued the letter on the basis that a primary insurer has a duty, under a theory of equitable subrogation to the excess carrier, to accept reasonable settlement offers within primary policy limits. *American Centennial Ins. Co. v. Canal Ins. Co.*, 843 S.W.2d 480, 483-85 (Tex. 1992). National Union further stated that it was issuing its letter without waiving its rights of equitable subrogation as set forth above. *See, e.g., Westchester Fire Ins. Co. v. Admiral Ins. Co.*, 152 S.W.3d 172 (Tex. App.–Fort Worth 2004, rev. denied).

**5.8** Wausau and Liberty Mutual failed to settle the Underlying Lawsuit.

**5.9** Pursuant to *American Centennial Ins. Co. v. Canal Ins. Co.*, 843 S.W.2d 480, 483-85 (Tex. 1992), National Union is pursuing its claim under the theory of equitable subrogation for Wausau's and Liberty Mutual's failure to accept reasonable settlement offers within primary policy limits, and hereby holds Wausau and Liberty Mutual responsible for all funds paid in excess of the Primary Policy's limits.

## **VI. CLAIM FOR DECLARATORY RELIEF AND OTHER DAMAGES**

**6.1** An actual controversy has arisen and now exists between the parties relating to Wausau's failure to settle the Underlying Lawsuit within the Primary Policy's limits. Declaratory judgment is, therefore, necessary and National Union requests a declaration of its rights under the theory of equitable subrogation. National Union requests a declaration from this

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Court that Wausau and Liberty Mutual are financially responsible for the judgment in excess of the Primary Policy's limits for its failure to settle the case when it had the opportunity to do so, but failed to.

**6.2** National Union has retained the law firm of Plavnický Kinzel Makowski LLP to represent it in this action, and National Union has agreed to pay the firm reasonable and necessary attorneys' fees and expenses. An award of these reasonable and necessary attorneys' fees and expenses incurred by National Union would be equitable and just, and National Union seeks recovery of them pursuant to this declaratory judgment action.

#### **VII. CONCLUSION AND PRAYER**

National Union Fire Insurance Company of Pittsburgh, Pa. respectfully prays that Wausau Underwriters Insurance Company and Liberty Mutual Group, Inc. be cited to appear herein, and that on final hearing hereof, National Union Fire Insurance Company of Pittsburgh, Pa. be awarded a judgment against Wausau Underwriters Insurance Company and Liberty Mutual Group, Inc. declaring that Wausau Underwriters Insurance Company and Liberty Mutual Group, Inc. are financially responsible for the judgment in excess of the Primary Policy's limits for their failure to settle the Underlying Lawsuit when it had the opportunity to do so, but failed to, and to all other relief that National Union Fire Insurance Company of Pittsburgh, Pa. may show itself justly entitled to both in law and in equity.

Respectfully submitted,

/s/ Chester J. Makowski  
Chester J. Makowski  
Texas State Bar No. 12852950  
Email: makowski@pkmtexas.com

C. Scott Kinzel  
Texas State Bar No. 00785499  
Email: kinzel@pkmtexas.com

141-279513-15

PLAVNICKY KINZEL MAKOWSKI LLP  
5300 Memorial Drive, Suite 675  
Houston, Texas 77007  
Telephone: 713.658.1111  
Fax: 713.658.8253

**ATTORNEYS FOR THE PLAINTIFF  
NATIONAL UNION FIRE INSURANCE COMPANY OF  
PITTSBURGH, PA.**

141-279513-15

**THOMAS A. WILDER, DISTRICT CLERK**  
**TARRANT COUNTY E-FILING SERVICE REQUEST FORM**

\* This document MUST be filed as a LEAD DOCUMENT REQUEST for E-Filing.

Cause No:

**National Union Fire Insurance Company of Pittsburgh, PA vs. Wausau Underwriters  
Insurance Co. and Liberty Mutual Group, Inc.**

West End, St. and Liberty, Wauwatosa, Wisconsin

Please reference the District Clerk web page, [www.tarrantcounty.com/eDistrictClerk](http://www.tarrantcounty.com/eDistrictClerk) for the following forms:  
Abstracts, Executions, Subpoenas.

Choose the type of service documents for issuance and select the type and quantity of issuance(s) needed.

Check box if you would like the District Clerk's Office to make copies for your service. (add \$,.35 per page per pleading for copies for service)

Name of Party to be served: **Wausau Underwriters Insurance Co.** Service Type **Citation**  
Address for Service: **See next page for Address** Party Type **Defendant**

Name of Party to be served: Liberty Mutual Group, Inc. Service Type: Citation  
Address for Service: See next page for Address Party Type: Defendant

Name of Party to be served: \_\_\_\_\_ Service Type: \_\_\_\_\_  
Address for Service: \_\_\_\_\_ Party Type: \_\_\_\_\_

Attach additional pages if there are more parties to be served.

Attach additional pages if there are more parties to be served.

**ATTORNEY(OR ATTORNEY'S AGENT) REQUESTING SERVICE:**

NAME: **Chester J. Makoswki** TEXAS BAR NO./ID NO. **12852950**

MAILING ADDRESS: Plavnický Kinzel Makowski LLP, 5300 Memorial Drive, # 675, Houston, TX 77007

PHONE NO.: 713-658-1111 FAX NO.: 713-658-8253

EMAIL ADDRESS: makowski@pkmtexas.com

REVISED 12/20/13

141-279513-15

1. **Name of Party to be served:** WAUSAU UNDERWRITERS INSURANCE CO.

**Address for Service:** Corporation Service Company  
211 East 7<sup>th</sup> Street, Suite 620  
Austin, Texas 78701-3218

2. **Name of Party to be served:** LIBERTY MUTUAL GROUP, INC.

**Address for Service:** Corporation Service Company  
211 East 7<sup>th</sup> Street, Suite 620  
Austin, Texas 78701-3218

S E R V I C E      R E P O R T  
(Certified Mail Only)

Cause Number: 141-279513-15

Party Name : WAUSAU UNDERWRITERS INSURANCE CO.

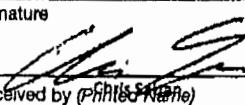
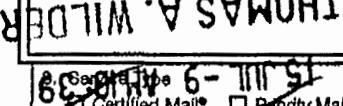
15 JUL - 9 PM 4:50  
THOMAS A. WILDER  
DISTRICT CLERK  
FILED  
TARRANT COUNTY  
*SP*

This service of process is being returned EXECUTED for  
the following reason:

Date: 07/09/2015

Service Fee: 0.00

*Stacie Reynolds*  
Deputy District Clerk

| SENDER: COMPLETE THIS SECTION  |  | COMPLETE THIS SECTION ON DELIVERY  |  |
|--|--|--|--|
| <ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul> |  | <p>A. Signature </p> <p><input checked="" type="checkbox"/> Agent    <input type="checkbox"/> Addressee</p>  |  |
| 1. Article Addressed to:<br><br>141-279513-15 CM<br>WAUSAU UNDERWRITERS INSURANCE CO<br>B/S CORPORATION SERVICE COMPANY<br>211 E 7 <sup>TH</sup> ST STE 620<br>AUSTIN, TX 78701-3218   |  | B. Received by (Printed Name) <br>C. Date of Delivery <b>JUL 06 2015</b>   |  |
|  |  | D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br>If YES, enter delivery address below: <input type="checkbox"/> No  |  |
|  |  | 4. Restricted Delivery (Extra Fee)   |  |
|  |  | <p><input checked="" type="checkbox"/> Certified Mail*    <input type="checkbox"/> Priority Mail Express™</p> <p><input type="checkbox"/> Registered    <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail    <input type="checkbox"/> Collect on Delivery</p> |  |
| 2. Article Number<br>(Transfer from service)   |  | 7013 0600 0002 0399 0815   |  |

THE STATE OF TEXAS  
DISTRICT COURT, TARRANT COUNTY

CITATION

Cause No. 141-279513-15  
*CM*

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG  
VS.  
WAUSAU UNDERWRITERS INSURANCE CO., ET AL

TO: WAUSAU UNDERWRITERS INSURANCE CO.

B/S CORPORATION SERVICE COMPANY REG AGT 211 E 7TH ST STE 620 AUSTIN, TX  
78701-3218

You said DEFENDANT are hereby commanded to appear by filing a written answer to the ORIGINAL PETITION FOR DECLARATORY JUDGMENT at or before 10 o'clock A.M. of the Monday next after the expiration of 20 days after the date of service hereof before the 141st District Court in and for Tarrant County, Texas, at the Courthouse in the City of Fort Worth, Tarrant County, Texas said PLAINTIFF being

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG

Filed in said Court on June 30th, 2015 Against  
WAUSAU UNDERWRITERS INSURANCE CO., LIBERTY MUTUAL GROUP INC.

For suit, said suit being numbered 141-279513-15 the nature of which demand is as shown on said ORIGINAL PETITION FOR DECLARATORY JUDGMENT a copy of which accompanies this citation.

*Thomas A. Wilder*  
THOMAS A. WILDER  
DISTRICT CLERK  
TARRANT COUNTY  
FILED  
15 JUL 19 PM 4:40

CHESTER MAKOWSKI  
Attorney for NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG P  
Address 5300 MEMORIAL DR STE 675 HOUSTON, TX 77007

Thomas A. Wilder, Clerk of the District Court of Tarrant County, Texas. Given under my hand and the seal of said Court, at office in the City of Fort Worth, this the 1st day of July, 2015.

By *Kimberly Krumland* Deputy  
KIMBERLY KRUMLAND

NOTICE: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 AM. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Thomas A. Wilder, Tarrant County District Clerk, 200 E WEATHERFORD, FORT WORTH TX 76196-0402

OFFICER'S RETURN

Received this Citation on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M; and executed at \_\_\_\_\_ within the county of \_\_\_\_\_, State of \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by mailing to the within named \_\_\_\_\_

a true copy of this Citation together with the accompanying copy of ORIGINAL PETITION FOR DECLARATORY JUDGMENT having first endorsed on same the date of delivery.

Deputy/Constable/Sheriff: \_\_\_\_\_  
County of \_\_\_\_\_ State of \_\_\_\_\_ BY \_\_\_\_\_ Deputy  
Fees \$ \_\_\_\_\_  
State of \_\_\_\_\_ County of \_\_\_\_\_ (Must be verified if served outside the State of Texas)  
Signed and sworn to by the said \_\_\_\_\_ before me this \_\_\_\_\_ day of \_\_\_\_\_,  
to certify which witness my hand and seal of office  
(Seal)  
County of \_\_\_\_\_, State of \_\_\_\_\_

**CITATION**

Cause No. 141-279513-15

NATIONAL UNION FIRE  
INSURANCE COMPANY OF PITTSBURG

VS.

WAUSAU UNDERWRITERS  
INSURANCE CO., ET AL

ISSUED

This 1st day of July, 2015

Thomas A. Wilder  
Tarrant County District Clerk  
200 E WEATHERFORD  
FORT WORTH TX 76196-0402

By KIMBERLY KRUMLAND Deputy

CHESTER MAKOWSKI  
Attorney for: NATIONAL UNION FIRE INSURANCE COMPANY OF PITTS  
Phone No. (713)658-6581  
ADDRESS: 5300 MEMORIAL DR STE 675

HOUSTON, TX 77007

CIVIL LAW



\*14127951315000007\*

|  |  |
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| U.S. Postal Service  |  |
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| FORT WORTH, TEXAS  |  |
| PS Form 3600-A   |  |

7013 0600 0002 0399 0815

Postage \$ 8.00  
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(Endorsement Not Required)  
Restricted Delivery Required  
(Endorsement Required)

Total Postage & Fees \$ 9.00

141-279513-15  
JUL 02 2015  
THOMAS A. WILDER  
DISTRICT CLERK  
TARRANT COUNTY CLERK  
AUSTIN, TX 78701-3218

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THOMAS A. WILDER  
15 JUL - 9 PM 4:40  
TARRANT COUNTY  
FILED

S E R V I C E R E P O R T  
(Certified Mail Only)

Cause Number: 141-279513-15

Party Name : LIBERTY MUTUAL GROUP INC.

This service of process is being returned EXECUTED  
the following reason:

THOMAS A. WILDER  
DISTRICT CLERK  
for

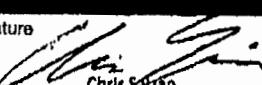
FILED  
FARRANT COUNTY  
*SP*

15 JUL - 9 PM 4:46

Date: 07/09/2015

Service Fee: 0.00

*Staci Remalho*  
Deputy District Clerk

|   |  |  |  |
|---|--|--|--|
| SENDER: COMPLETE THIS SECTION   |  | COMPLETE THIS SECTION ON DELIVERY  |  |
| <ul style="list-style-type: none"><li><input type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li><input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you.</li><li><input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul> |  | <p>A. Signature <br/><input checked="" type="checkbox"/> Chris Remalho <input type="checkbox"/> Agent<br/><input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <input type="text" value="JUL 06 2015"/> C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>If YES, enter delivery address below: <input type="checkbox"/> No</p> |  |
| 1. Article Addressed to:<br><br>141-279513-15 CM<br>LIBERTY MUTUAL GROUP INC<br>B/S CORPORATION SERVICE COMPANY<br>211 E 7 <sup>TH</sup> ST STE 620<br>AUSTIN, TX 78701-3218  |  | THOMAS A. WILDER<br>DISTRICT CLERK<br><br>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Priority Mail Express™<br><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured <input type="checkbox"/> Collect on Delivery   |  |
| 2. Article Number<br>(Transfer from s) <input type="text" value="7013 0600 0002 0399 0822"/>  |  | 4. Restricted Delivery (Extra Fee) <input type="checkbox"/> Yes  |  |

THE STATE OF TEXAS  
DISTRICT COURT, TARRANT COUNTY

CM

CITATION

Cause No. 141-279513-15

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG  
VS.  
WAUSAU UNDERWRITERS INSURANCE CO., ET AL

TO: LIBERTY MUTUAL GROUP INC.

B/S CORPORATION SERVICE COMPANY REG AGT 211 E 7TH ST STE 620 AUSTIN, TX  
78701-3218

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NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG

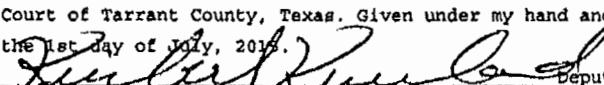
Filed in said Court on June 30th, 2015 Against  
WAUSAU UNDERWRITERS INSURANCE CO., LIBERTY MUTUAL GROUP INC.

For suit, said suit being numbered 141-279513-15 the nature of which demand is as shown on said ORIGINAL PETITION FOR DECLARATORY JUDGMENT a copy of which accompanies this citation.

TS  
FILED  
TARRANT COUNTY  
THOMAS A. WILDER  
DISTRICT CLERK  
05 JUL -9 PM 4:40

CHESTER MAKOWSKI  
Attorney for NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG P  
Address 5300 MEMORIAL DR STE 675 HOUSTON, TX 77007

Thomas A. Wilder, Clerk of the District Court of Tarrant County, Texas. Given under my hand and the seal of said Court, at office in the City of Fort Worth, this the 1st day of July, 2015.

By  Deputy  
KIMBERLY KRUMLAND

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Thomas A. Wilder, Tarrant County District Clerk, 200 E WEATHERFORD, FORT WORTH TX 76196-0402

OFFICER'S RETURN

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Deputy/Constable/Sheriff: \_\_\_\_\_

County of \_\_\_\_\_ State of \_\_\_\_\_ By \_\_\_\_\_ Deputy

Fees \$ \_\_\_\_\_

State of \_\_\_\_\_ County of \_\_\_\_\_ (Must be verified if served outside the State of Texas)

Signed and sworn to by the said \_\_\_\_\_ before me this \_\_\_\_\_ day of \_\_\_\_\_,

to certify which witness my hand and seal of office

(Seal)

County of \_\_\_\_\_, State of \_\_\_\_\_

### CITATION

Cause No. 141-279513-15

**NATIONAL UNION FIRE  
INSURANCE COMPANY OF PITTSBURG**

VS.

**WAUSAU UNDERWRITERS  
INSURANCE CO., ET AL.**

**ISSUED**

This 1st day of July, 2015

Thomas A. Wilder  
Tarrant County District Clerk  
200 E WEATHERFORD  
FORT WORTH TX 76196-0402

By KIMBERLY KRUMLAND Deputy

**CHESTER MAKOWSKI**  
Attorney for: NATIONAL UNION FIRE INSURANCE COMPANY OF PITTS  
Phone No. (713)658-6581  
ADDRESS: 5300 MEMORIAL DR STE 675

HOUSTON, TX 77007

CIVIL LAW



\*14127951315000008\*

THOMAS A. WILDER  
DISTRICT CLERK

TARRANT COUNTY  
FILED

141-279513-15

FILED  
TARRANT COUNTY  
7/24/2015 10:43:47 AM  
THOMAS A. WILDER  
DISTRICT CLERK

**CAUSE NO. 141-279513-15**

**NATIONAL UNION FIRE  
INSURANCE COMPANY OF  
PITTSBURGH, P.A.,  
Plaintiff**

**IN THE DISTRICT COURT**

v.  
**WAUSAU UNDERWRITERS  
INSURANCE CO. AND LIBERTY  
MUTUAL GROUP, INC.,  
Defendants**

**TARRANT COUNTY, TEXAS**

**§ 141<sup>ST</sup> JUDICIAL DISTRICT**

**DEFENDANTS' ORIGINAL ANSWER AND VERIFIED DENIAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendants Wausau Underwriters Insurance Company and Liberty Mutual Group Inc. and file this Original Answer and Verified Denial to Plaintiff's Original Petition for Declaratory Judgment and for such would respectfully show the Court the following:

**I.**  
**GENERAL DENIAL**

Pursuant to TEX. R. CIV. P. 92, Defendants deny each and every, all and singular, the allegations set forth in Plaintiff's Original Petition for Declaratory Judgment and demand strict proof thereof by a preponderance of the evidence at the final trial of this case.

**II.**  
**VERIFIED DENIAL**

Pursuant to the provisions of Rule 93 of the Texas Rules of Civil Procedure, Defendant Liberty Mutual Group Inc. denies that it is a proper party to this lawsuit on the grounds that it did not issue the relevant insurance policy to Plaintiff in this case. The insurance policy at issue in this lawsuit was issued by Wausau Underwriters Insurance Company.

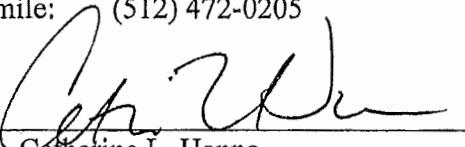
141-279513-15

WHEREFORE, PREMISES CONSIDERED, Defendants Wausau Underwriters Insurance Company and Liberty Mutual Group Inc. respectfully pray that upon final hearing hereof, Plaintiff National Union Fire Insurance Company of Pittsburgh, P.A. take nothing by reason of this action, that Defendants be awarded their costs of court, and for such other and further relief to which they may show themselves justly entitled.

Respectfully submitted,

**HANNA & PLAUT, L.L.P.**  
211 East Seventh Street, Suite 6000  
Austin, Texas 78701  
Telephone: (512) 472-7700  
Facsimile: (512) 472-0205

By:



Catherine L. Hanna  
State Bar No. 08918280  
Email: channa@hannaplaute.com  
Eric S. Peabody  
State Bar No. 00789539  
Email: epeabody@hannaplaute.com

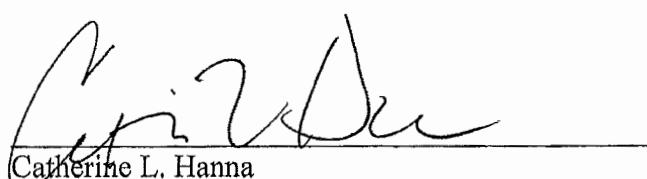
**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been delivered by e-service and/or facsimile on this 24th day of July, 2015 to:

**Via Facsimile (713) 658-8253**

Chester J. Makowski  
C. Scott Kinzel  
Plavnický Kinzel Makowski LLP  
5300 Memorial Drive, Suite 675  
Houston, Texas 77007  
*Attorneys for Plaintiff*

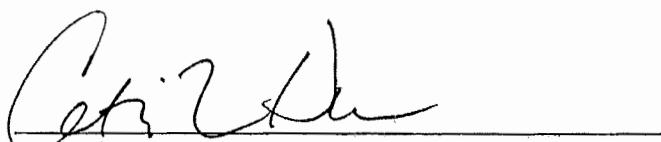
  
\_\_\_\_\_  
Catherine L. Hanna

141-279513-15

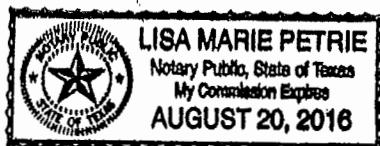
**VERIFICATION**

STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS               §

BEFORE ME, the undersigned authority in and for the State of Texas, on this day personally appeared Catherine L. Hanna known to me to be the same person whose name is subscribed hereto, who being first duly sworn in the manner provided by law on oath stated that she is duly qualified to make this affidavit on behalf of Liberty Mutual Group Inc., one of the Defendants in the above-entitled and numbered cause, that she has read Paragraph II of the Original Answer and Verified Denial and the matters stated therein are within her personal knowledge and are true and correct.

  
\_\_\_\_\_  
Catherine L. Hanna

24th SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this day of July, 2015, to certify which witness my hand and official seal of office.



  
\_\_\_\_\_  
Lisa Marie Petrie  
Notary Public for the State of Texas

# **EXHIBIT “B”**

Cause Of Action: OTHER CIVIL, OTHER

# **EXHIBIT “C”**

**LIST OF ALL COUNSEL OF RECORD**

**Counsel for Plaintiff National Union Fire Insurance Company of Pittsburgh, P.C.**

Chester J. Makowski  
C. Scott Kinzel  
Plavnick Kinzel Mackowski  
5300 Memorial Dr., Ste. 675  
Houston, Texas 77007  
(713) 658-1111 (Telephone)  
(713) 658-8253 (Facsimile)

**Counsel for Defendants Wausau Underwriters Insurance Company and Liberty Mutual Group Inc.**

Catherine L. Hanna  
Eric S. Peabody  
Hanna & Plaut, L.L.P.  
211 East Seventh Street, Suite 600  
Austin, Texas 78701  
(512) 472-7700 (Telephone)  
(512) 472-0205 (Facsimile)

# **EXHIBIT “D”**

INDEX OF ALL DOCUMENTS FILED WITH THE COURT

1. Notice of Removal of Action Under 28 U.S.C. §§ 1332 and 1441(a) (Diversity)
2. True and correct copies of all pleadings, process and orders served in this action
3. State Court Docket Sheet
4. List of all Counsel of Record